

IN THE DISTRICT COURT OF LEFLORE COUNTY
STATE OF OKLAHOMA

AES Shady Point, LLC, a Delaware limited
liability company,

Plaintiff,

v.

Continental Carbonic Products, Inc., an
Illinois corporation; and OK Foods, Inc., an
Oklahoma corporation,

Defendants.

Case No. *CJ-18-245*

FILED
DEC 21 2018

MELBA L. HALL, COURT CLERK
STATE OF OKLA.-LEFLORE COUNTY

PETITION

Comes now AES Shady Point, LLC ("AES/SP") and for its Petition against the above
named Defendants, states and alleges as follows:

1. AES/SP is a Delaware limited liability company with its principle place of
business located in Panama, Oklahoma.
2. Continental Carbonic Products, Inc. ("CCP") is an Illinois corporation doing
business in, among other places, Oklahoma.
3. OK Foods, Inc. ("OK Foods") is an Oklahoma corporation doing business in
Oklahoma.
4. Jurisdiction and venue are proper before this Court.

FACTS

5. On or about July 3, 2007, AES/SP entered into a Sales Agreement, as amended,
with CCP for the sale of food grade dry ice pellets (the "Agreement"). In accordance with the
terms of the Agreement, AES/SP sells agreed quantities of dry ice pellets to CCP for its use in
its business operations.

6. The dry ice pellets purchased by CCP pursuant to the terms of the Agreement are delivered to CCP at AES/SP's electric co-generation facility located in Panama, OK. Pursuant to the terms of the Agreement, possession, title and risk of loss for the dry ice pellets provided to CCP passes to CCP at AES/SP's Panama facility.

7. In September of 2018 CCP representatives contacted AES/SP representatives alleging that certain deliveries of dry ice pellets had been purportedly contaminated, resulting in damages to the separate Defendant, OK Foods, one of CCP's customers, which had used the dry ice pellets in its chicken processing and/or storage operations.

8. CCP made demand upon AES/SP to indemnify it for any and all claims, losses and/or damages asserted against CCP by OK Foods, and requested a defense and indemnification from AES/SP for any defense costs or liability resulting from OK Foods' claims.

9. The Agreement between AES/SP and CCP specifically provides that AES/SP will not be liable to CCP for any defective or contaminated dry ice pellets arising out of or in connection with the sale or use of said pellets, unless such liability and/or contamination resulted from the "willful misconduct" of dry ice pellets of AES/SP, its employees or subcontractors.

10. Any purported contamination referenced by CCP was not the result of any willful misconduct of AES/SP or any of its representatives, agents, employees or subcontractors. AES/SP has informed CCP that it has no legal or equitable obligation to indemnify CCP and that it has no liability for any costs or losses of either CCP or OK Foods.

11. After an exchange of written communications between CCP and AES/SP, it has become clear that the parties are unable to resolve their dispute regarding potential liability for any damages or losses claimed by either OK Foods or CCP.

COUNT ONE

Declaratory Judgment Action

AES/SP hereby adopts and incorporates by reference paragraphs 1 through 11 above as if set forth in this, its first cause of action.

12. AES/SP disputes CCP's allegation that AES/SP is responsible and/or liable to CCP or OK Foods for any damages or losses associated with the above referenced dry ice pellets.

13. CCP, and on information and belief, OK Foods, disputes the position taken by AES/SP and an actual case and controversy exists between said parties regarding AES/SP's liability to either CCP or OK Foods arising out of or in any way related to the sale of dry ice pellets as referenced herein.

14. Pursuant to 12 O.S. § 1651 et seq., AES/SP is entitled to have this Court settle the controversy between the parties and determine that AES/SP is not liable to CCP or OK Foods for any damages, losses or claims referenced above, or any other claims arising out of or related to the above described facts.

Wherefore, premises considered, AES/SP requests the Court find AES/SP to have no liability whatsoever to CCP or OK Foods with respect to the sale or use of the dry ice pellets referenced above, or for any costs, damages or losses related thereto or resulting therefrom. AES/SP also requests any and all other relief to which it might be entitled, including its attorney's fees and costs incurred herein.

Respectfully submitted,




Douglas W. Sanders, Esq.
Sanders, Sanders & Sullivan, P.C.
P.O. Box 279
323 Dewey Avenue
Poteau, OK 74953
(918) 647-8201/Fax (918) 647-2428

And

James M. Reed, OBA #7466
**HALL, ESTILL, HARDWICK, GABLE,
GOLDEN & NELSON, P.C.**
320 South Boston Avenue, Suite 200
Tulsa, OK 74103-3706
Telephone (918) 594-0400
Facsimile (918) 594-0505
**ATTORNEYS FOR PLAINTIFF,
AES SHADY POINT, LLC**

3809247.1:210565:02349

COUNTY OF LEFLORE } ss
STATE OF OKLAHOMA }
I, MELBA L. HALL, COURT CLERK IN AND FOR LEFLORE
COUNTY, STATE OF OKLAHOMA, DO HEREBY CERTIFY THAT
THE WITHIN AND FOREGOING IS TRUE AND CORRECT
COPY OF THE ORIGINAL AS THE SAME APPEARS ON FILE AND ASSET IN MY OFFICE.
IN WITNESS WHEREOF, I HEREBY SET MY HAND AND AFFIX
THE SEAL OF SAID COURT, THIS 24th DAY OF APRIL, 2019.
BY  CLERK

IN LEFLORE COUNTY, OKLAHOMA DISTRICT COURT / CASE # CJ-2018-245

AES SHADY POINT, LLC,

PLAINTIFF,

- VS -

CONTINENTAL CARBONIC PRODUCTS, INC.,
AND
OK FOODS, INC.,

DEFENDANTS.

TO THE DEFENDANT: CONTINENTAL CARBONIC PRODUCTS, INC.,
C/O: Corporation Service Company
10300 Greenbriar Place
Oklahoma City, OK 73159
The Defendant's Registered Service Agent

SUMMONS

FILED
APR 17 2019

MELBA L. HALL, COURT CLERK
STATE OF OKLA. LEFLORE COUNTY

You have been sued by the Plaintiff named above. You are directed to file a written answer to the attached Petition in the court reflected above within twenty (20) days after service of this summons upon you, EXCLUDING the day you are served with this summons and petition. A copy of your answer must be delivered or mailed to the attorney for the plaintiff. Unless you answer the petition within the time stated judgment may be rendered against you together with the costs of the action.

Issued on APRIL 12, 2019

MELBA HALL, COURT CLERK

[SEAL]

By Rebekah Robertson
Deputy Court Clerk

Douglas W. Sanders, Jr. OBA # 10601
SANDERS, SANDERS & SULLIVAN, P.C.
Attorney at Law
P.O. Box 279 / 323 Dewey Avenue
Poteau, OK, 74953
Phone (918) 647-8201 / Fax (918) 647 - 2428
E-Mail Dougal@sanders-sullivan.com

COUNTY OF LEFLORE
STATE OF OKLAHOMA }
I, MELBA L. HALL, COURT CLERK, DO HEREBY CERTIFY THAT
THE WITHIN AND FOREGOING IS A TRUE AND CORRECT
COPY OF THE ORIGINAL FILED IN THE COURT OF LEFLORE
AS THE SAME APPEARS TO ME AS THE CLERK OF THE COURT
IN WITNESS WHEREOF, I HAVE SET MY HAND AND AFFIX
THE SEAL OF THE COURT, THIS 24th DAY OF APRIL, 2019.
BY Rebekah Robertson DEPUTY CLERK

This summons was served on APRIL 15, 2019.

CERTIFIED MAIL
SEE ATTACHED

Douglas W. Sanders, Jr.
Signature of person serving summons

YOU MAY SEEK THE ADVICE OF ANY ATTORNEY ON ANY MATTER CONNECTED WITH THIS SUIT OR YOUR ANSWER. SUCH ATTORNEY SHOULD BE CONSULTED IMMEDIATELY SO THAT AN ANSWER MAY BE FILED WITHIN THE TIME LIMIT STATED IN THE SUMMONS.

U.S. Postal Service™
CERTIFIED MAIL® RECEIPT
 Domestic Mail Only

For delivery information, visit our website at www.usps.com®.

OFFICIAL USE

Certified Mail Fee \$3.50

Extra Services & Fees (check box, add fee as appropriate)

☐ Return Receipt (hardcopy) \$2.80

☐ Return Receipt (electronic) \$0.00

☐ Certified Mail Restricted Delivery \$0.00

☐ Adult Signature Required \$0.00

☐ Adult Signature Restricted Delivery \$0.00

Postage \$0.70

Total Postage and Fees \$7.00

Sent To Continental Carbonic

Street and Apt. No., or PO Box No.

City, State, ZIP+4®

PS Form 3800, April 2015 PSN 7530-02-000-9047 See Reverse for Instructions

0222 03

Postmark
 04/12/2019

7017 1450 0001 7411 6160

SENDER: COMPLETE THIS SECTION	COMPLETE THIS SECTION ON DELIVERY
<p>■ Complete items 1, 2, and 3.</p> <p>■ Print your name and address on the reverse so that we can return the card to you.</p> <p>■ Attach this card to the back of the mailpiece, or on the front if space permits.</p> <p>Article Addressed to: <u>Continental Carbonic Products</u> <u>Co Corporations Service Co.</u> <u>10300 Greenbriar Place</u> <u>Oklahoma City, OK 73159</u></p> <p>Barcode: 9590 9402 4145 8092 9393 05</p> <p>2. Article Number (PSN) <u>7017 1450 0001 7411 6160</u></p>	<p>A. Signature <u>X</u> <u>G. Parish</u> <input type="checkbox"/> Agent <input type="checkbox"/> Addressee</p> <p>B. Received by (Print Name) <u>G. Parish</u> C. Date of Delivery <u>APR 15 2019</u></p> <p>D. Is delivery restricted from item 1? <input type="checkbox"/> Yes <input type="checkbox"/> No If YES, enter delivery address below:</p> <p>3. Service Type</p> <p><input type="checkbox"/> Adult Signature <input type="checkbox"/> Priority Mail Express®</p> <p><input type="checkbox"/> Adult Signature Restricted Delivery <input type="checkbox"/> Registered Mail™</p> <p><input type="checkbox"/> Certified Mail® <input type="checkbox"/> Registered Mail Restricted Delivery</p> <p><input type="checkbox"/> Certified Mail Restricted Delivery <input type="checkbox"/> Return Receipt for Merchandise</p> <p><input type="checkbox"/> Signature Confirmation™ <input type="checkbox"/> Signature Confirmation Restricted Delivery</p> <p><input type="checkbox"/> Insured Mail Restricted Delivery (over \$500)</p>

PS Form 3811, July 2015 PSN 7530-02-000-9053 Domestic Return Receipt

IN LEFLORE COUNTY, OKLAHOMA DISTRICT COURT / CASE # CJ-2018-245

AES SHADY POINT, LLC,

PLAINTIFF,

- VS -

**CONTINENTAL CARBONIC PRODUCTS, INC.,
AND
OK FOODS, INC.,**

DEFENDANTS.

TO THE DEFENDANT: OK FOODS, INC.
C/O: JIM FLYNN
904 South Main Street
Broken Arrow, OK 74102
The Defendant's Registered Service Agent

SUMMONS

FILED
APR 24 2019

MELBA L. HALL, COURT CLERK
STATE OF OKLA.-LEFLORE COUNTY

You have been sued by the Plaintiff named above. You are directed to file a written answer to the attached Petition in the court reflected above within twenty (20) days after service of this summons upon you, EXCLUDING the day you are served with this summons and petition. A copy of your answer must be delivered or mailed to the attorney for the plaintiff. Unless you answer the petition within the time stated judgment may be rendered against you together with the costs of the action.

Issued on **APRIL 12, 2019**

MELBA HALL, COURT CLERK

[SEAL]

By Rebekah Robertson

Deputy Court Clerk

Douglas W. Sanders, Jr. OBA # 10601

SANDERS, SANDERS & SULLIVAN, P.C.

Attorney at Law

P.O. Box 279 / 323 Dewey Avenue

Poteau, OK, 74953

Phone (918) 647-8201 / Fax (918) 647 - 2428

E-Mail Dougal@sanders-sullivan.com

STATE OF OKLAHOMA } SS
MELBA L. HALL, COURT CLERK IN AND FOR LEFLORE
COUNTY, STATE OF OKLAHOMA, DO HEREBY CERTIFY THAT
THE WITHIN AND FOREGOING IS A TRUE, TRUE AND CORRECT
COPY OF THE ORIGINAL. I HAVE APPEARED ON FILE AND RECORDED IN MY OFFICE.
IN WITNESS WHEREOF, I HERETO SET MY HAND AND AFFIX
DAY OF April 24 2019
Debra Byrd
DEPUTY CLERK

This summons was served on 4-22-19

Douglas W. Sanders, Jr.
Signature of person serving summons

**YOU MAY SEEK THE ADVICE OF ANY ATTORNEY ON ANY MATTER CONNECTED WITH THIS
SUIT OR YOUR ANSWER. SUCH ATTORNEY SHOULD BE CONSULTED IMMEDIATELY SO
THAT AN ANSWER MAY BE FILED WITHIN THE TIME LIMIT STATED IN THE SUMMONS.**

U.S. Postal Service™
CERTIFIED MAIL® RECEIPT
 Domestic Mail Only

For delivery information, visit our website at www.usps.com®.

OFFICIAL USE

TUESDAY 04/12/2019 0222 03

Certified Mail Fee \$3.50

Extra Services & Fees (check box, add fee as indicated)

☐ Return Receipt (hardcopy) \$0.00

☐ Return Receipt (electronic) \$0.00

☐ Certified Mail Restricted Delivery \$0.00

☐ Adult Signature Required \$0.00

☐ Adult Signature Restricted Delivery \$0.00

Postage \$0.70

Total Postage and Fees \$7.00

Sent To OK Foods

Street and Apt. No., or PO Box No.

City, State, ZIP+4®

PS Form 3800, April 2015 PSN 7530-02-000-9047 See Reverse for Instructions

SENDER: COMPLETE THIS SECTION	COMPLETE THIS SECTION ON DELIVERY
<ul style="list-style-type: none"> Complete items 1, 2, and 3. Print your name and address on the reverse so that we can return the card to you. Attach this card to the back of the mailpiece, or on the front if space permits. 	<p>A. Signature <u>[Signature]</u> <input checked="" type="checkbox"/> Agent <input type="checkbox"/> Addressee</p> <p>B. Received by (Printed Name) <u>CHRIS THOMPSON</u> C. Date of Delivery <u>4-22-19</u></p> <p>D. Is delivery address different from item 1? <input type="checkbox"/> Yes <input type="checkbox"/> No If YES, enter delivery address below:</p>
<p>1. Article Addressed to:</p> <p><u>OK Foods Inc</u> <u>90 Trent Gains</u> <u>PO Box 1787</u> <u>Ft Smith AR 72804</u> <u>72902</u></p> <p>9590 9402 3190 7166 0832 20</p>	<p>3. Service Type</p> <p><input type="checkbox"/> Adult Signature <input type="checkbox"/> Priority Mail Express®</p> <p><input type="checkbox"/> Adult Signature Restricted Delivery <input type="checkbox"/> Registered Mail™</p> <p><input type="checkbox"/> Certified Mail® <input type="checkbox"/> Registered Mail Restricted Delivery</p> <p><input type="checkbox"/> Certified Mail Restricted Delivery <input type="checkbox"/> Return Receipt for Merchandise</p> <p><input type="checkbox"/> Collect on Delivery <input type="checkbox"/> Signature Confirmation™</p> <p><input type="checkbox"/> Collect on Delivery Restricted Delivery <input type="checkbox"/> Signature Confirmation Restricted Delivery</p>
<p>2. Article Number (Transfer from carrier label)</p> <p>7017 1450 0001 7411 6184</p>	

PS Form 3811, July 2015 PSN 7530-02-000-9053

Domestic Return Receipt